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C O N F I D E N T I A L SECTION 01 OF 03 COLOMBO 001975

SIPDIS

DEPARTMENT FOR SA, SA/INS, INR/NESA

NSC FOR E. MILLARD

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SUBJECT: Adverse court ruling and coalition stresses
spell trouble for government

Refs: (A) FBIS Reston Va DTG 220642Z Oct 02

- (B) Colombo 1968
- (C) Colombo 1942, and previous

(U) Classified by W. Lewis Amselem, Deputy Chief of Mission. Reasons 1.5 (b, d).

[1](#)1. (C) SUMMARY: In a widely anticipated decision, Sri Lanka's Supreme Court has shot down the government's bid to rein in President Kumaratunga's powers. The government is still developing its reaction to the adverse ruling. On another front, the GSL continues to try to squelch a mutiny by a dissident faction of Muslim MPs led by a controversial politician. Given the confluence of its recent cohabitation and coalition problems, the government is clearly taking on some water in spite of the general popularity of its peace initiative. END SUMMARY.

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Adverse Court Ruling
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[1](#)2. (SBU) In a widely anticipated decision foreshadowed in Ref C, Sri Lanka's Supreme Court has shot down the government's bid to rein in President Kumaratunga's powers. In its (highly technical) decision formally announced on October 22, the court ruled that the section of the government's proposed "19th" constitutional amendment voiding the power of the president to call an election one-year after the last election required a national referendum. This was a sharp surprise to the government, which thought it would only need two-thirds support in Parliament to pass the proposed amendment. The court did state that this section of the proposed amendment could possibly pass constitutional review if it was redrafted to read that the president could only call a new election three years after the last election. If it was redrafted in this fashion, the amendment could become law if it attained two-thirds support in Parliament without need of a referendum, the court stated. As for the proposed amendment's other key section, the court ruled that the proposal to allow crossover voting in Parliament was unconstitutional. (Note: See Ref C for additional detail regarding the court's decision on the proposed "19th" amendment.)

[1](#)3. (SBU) To add insult to injury, the Supreme Court also ruled against the government's proposed "18th" constitutional amendment. The court ruled that the proposed amendment's clauses providing immunity to members of a constitutional council administering independent commissions were unconstitutional unless extensively redrafted. In addition, a referendum was needed for the proposed amendment's passage into law. (Note: In the 17th amendment passed last year, the government agreed to set up independent commissions for elections, the judiciary, police, and the civil service. Because of disagreements over immunity and other issues, the independent commissions are not yet in operation.)

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GSL Reaction Not Clear
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[1](#)4. (C) The government is still developing its reaction to the adverse ruling. In a press conference, G.L. Peiris, the Minister for Constitutional Affairs, indicated that the GSL was reluctant to press for a referendum on the proposed "19th" amendment because the subject was so narrow and complex that it did not lend itself well to public debate. Instead, Peiris indicated, the government was seriously considering trying to call a parliamentary election, which would allow the public a clear choice between the PM and the president. (Note: It is not clear whether the

constitution allows Parliament acting on its own to call an election or whether it would need the president's blessing. For her part, the president has made clear she has no plans to call an election.) Peiris added that the government was also mulling over whether it should try to redraft the proposed "19th" amendment to meet the court's concerns. Discussing the issue with the Ambassador, Milinda Moragoda, the Minister for Economic Reform, related that the government had not made any decisions on what to do and he did not expect any soon. The PM was still reviewing the issue, he noted.

15. (C) While the government's next steps are still being determined, it is clear that it has been sorely embarrassed by the court's decision. The press has been full of articles querying how the GSL could have drafted amendments that were so easily knocked down by the court. (Note: Although the court is considered pro-Kumaratunga in its composition, most observers believe that its decision was reasonably well founded.) Commenting on the government's predicament, Taranjit Sandhu, polchief at the Indian High Commission, told us that the government "really is looking incompetent on this issue and had better gets its act together quickly."

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Fire on Another Front
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16. (C) The GSL also continues to try to squelch a mutiny by a dissident faction of Muslim MPs. As reported in Ref B, these MPs have basically rebelled against the leader of their party, Rauf Hakeem of the Sri Lanka Muslim Congress (SLMC). The dissidents, who number anywhere from three upwards, have demanded that the government agree to create a council for Muslims in the east as a condition for any interim negotiated solution to the conflict with the Tamil Tigers. While it is not clear, the dissidents seem to be threatening to bolt from the government's coalition or at least boycott Parliament until their demands are met. For its part, the government is working overtime to bring the dissidents back into the fold. (Note: As related in Ref B, if the MPs left the coalition, it could have a serious impact on the governing coalition's slim majority status. Even with the Muslims out of the equation, however, the government does not appear to be any immediate danger of falling because it appears that it can count on the support of Tamil MPs in any parliamentary vote of confidence.)

17. (C) The leader of the dissidents is a controversial figure. A.L.M. Athaullah, 45, is the Minister for Highways, a non-cabinet position. He is from Ampara District in the east and was a close associate of M.H.M. Ashraff, the founder of the SLMC who died in 2000. According to some observers, Athaullah has a thuggish reputation and a bent toward Islamic communal thinking. Moragoda told the Ambassador that Athaullah is using Islamic extremist rhetoric in an attempt to whip up anti-peace process opinion in the east. Moragoda, who encountered Athaullah during a recent visit to the east, commented that he (Athaullah) seemed to be having some success using this tack.

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COMMENT
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18. (C) Given the confluence of its recent cohabitation and coalition problems, the government is clearly taking on some water. The court decision, in particular, has been one of the most serious setbacks it has suffered since coming to power in December 2001. Despite its problems, the government still seems to maintain widespread public support due to the popularity of its peace initiative. In light of its current problems, the government might be tempted to try to get out of the box it is now in by testing its presumed popularity with the voters via a national election. END COMMENT.

19. (U) Minimize considered.

WILLS